

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
COUNTY OF GRANITE, MONTANA ) File No. 0002780258
Request for Waiver Pursuant to Section 337(c) of )
the Communications Act of 1934, as Amended )

ORDER

Adopted: May 19, 2009

Released: May 19, 2009

By the Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The County of Granite, Montana ("Granite" or "the County") filed an application<sup>1</sup> to modify its public safety communications system under its license for Station KOF476 by adding three Part 80<sup>2</sup> maritime ship and private coast station frequencies in the VHF 156-162 MHz band at three locations. Pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act), Granite seeks waiver of Sections 80.105, 80.106, 80.123, 80.203, 80.213, 80.371, and 80.373,<sup>3</sup> and such other sections of Part 80 of the Commission's rules as may be necessary,<sup>4</sup> to use frequencies that are designated for maritime use under Part 80.<sup>5</sup> In the alternative, Granite requests a waiver under Section 1.925 of the Commission's rules to use the three maritime frequencies.<sup>6</sup> By this Order, we deny Granite's request for relief under Section 337(c) but grant Granite's alternative request in part under Section 1.925, as set forth below and as conditioned herein, to use the requested maritime frequencies for its public safety communications system under Part 90.

<sup>1</sup> See File No. 0002780258 (filed Oct. 11, 2006, as amended Dec. 11, 2006, April 16, 2007, Aug. 20, 2007, and Oct. 5, 2007) and associated initial Waiver Request (Initial Waiver Request) (filed Oct. 6, 2006), Waiver Clarification for Part 80 frequencies (Waiver Clarification) (filed Aug. 20, 2007), Letter Supplementing Waiver Clarification (Supplemental Waiver Letter) (dated Oct. 5, 2007), Clarification Letter from Steve Immenschuh, Sheriff, Granite County, to Public Safety and Homeland Security Bureau, Policy Division (Amended Waiver Request) (filed July 29, 2008).

<sup>2</sup> See 47 C.F.R. Part 80.

<sup>3</sup> 47 C.F.R. §§ 80.105, 80.106, 80.123, 80.203, 80.213, 80.371, and 80.373. Sections 80.106, 80.123, and 80.371 apply to public coast stations. Because Granite is requesting use of ship and private coast station frequencies, a waiver of Sections 80.106, 80.123, and 80.371, as requested by Granite, is not required. See 47 C.F.R. § 80.106 (requiring "public coast stations to exchange radio communications" with ship or aircraft stations at sea); § 80.123 (setting forth general operating criteria for marine VHF public coast stations and land stations); § 80.371 (describing the working frequencies assignable to ship and public coast stations). Therefore, Granite's request with respect to these rule sections is moot.

<sup>4</sup> See Waiver Clarification.

<sup>5</sup> 47 U.S.C. § 337(c).

<sup>6</sup> See Waiver Clarification at 1.

## II. BACKGROUND

2. *Granite's Waiver Request.* Granite is one of four Montana counties that have formed the I-15/90 Corridor Interoperability Communications Consortium (I-15/90 Consortium) “to conduct a needs assessment of the current communication environment”<sup>7</sup> and “to leverage their combined efforts in planning and implementing an interoperable communications system.”<sup>8</sup> Granite submits that its “system was engineered as a multi[-]cast county wide system for all county public safety services . . . , [including] Four County Consortium Interoperability repeaters with local paging and Four County Consortium wide paging.”<sup>9</sup>

3. Granite also states that the Consortium is part of the Montana Interoperability Consortia/Interoperability Montana (IM) Project “aimed at achieving a reliable, effective fully interoperable communications system within and between the counties; between the Southwest Interoperability Project and Missoula [Montana] and between all local, state and federal entities involved in emergency management and response.”<sup>10</sup> Granite asserts that the Montana statewide system consists of several “[c]onsortia of Federal, state, Tribal Nation and County agencies to assist in the funding and deployment of a statewide voice and data interoperability system that is currently being deployed as a VHF system.”<sup>11</sup> Granite adds that Montana’s IM Project “is a statewide trunked/conventional hybrid P25 system available to all local, tribal, state and federal responders in Montana.”<sup>12</sup>

4. Granite seeks to modify its license for Station KOF476, a conventional public safety system, and to upgrade its public safety operations on VHF frequencies in its service area to participate in Montana’s statewide interoperable VHF communications system.<sup>13</sup> Granite states that its frequency coordinator, AASHTO, “conducted a thorough search of the Public Safety frequency pool and could not identify suitable frequencies to satisfy all of the system operating parameters.”<sup>14</sup> Granite adds that it “has no reasonable alternative due to the intensive use of Public Safety Radio service spectrum in the Granite County[,] Montana area.”<sup>15</sup> In support, the County provides channel studies purporting to demonstrate that the available Public Safety Radio Service Pool frequencies in the VHF band are insufficient to meet its public safety needs<sup>16</sup> and “to complete [its] system.”<sup>17</sup>

5. Granite’s application to modify its license includes three ship and private coast station frequencies designated for ship and private coast station use under Part 80 in the VHF band.<sup>18</sup> Granite

<sup>7</sup> Amended Waiver Request at 1. The other three Montana counties in the I-15/90 Consortium are Anaconda-Deer Lodge, Beaverhead, and Butte-Silverbow. *See id.*

<sup>8</sup> Amended Waiver Request at 2.

<sup>9</sup> *See* File No. 0002780258 (as amended April 16, 2007) (attaching Granite “Consortia Letter”) (Consortia Letter).

<sup>10</sup> Amended Waiver Request at 1-2.

<sup>11</sup> Consortia Letter.

<sup>12</sup> Amended Waiver Request at 6.

<sup>13</sup> *See* File No. 0002780258 and Consortia Letter.

<sup>14</sup> Initial Waiver Request.

<sup>15</sup> *Id.*

<sup>16</sup> *See* File No. 0002780258 (as amended Nov. 21, 2006) (attaching “Frequency Showing”) (Granite Frequency Showing).

<sup>17</sup> Supplemental Waiver Letter; Amended Waiver Request at 5.

<sup>18</sup> *See* File No. 0002780258, FCC 601 – Schedule H at 4-5, 7, 10, requesting 156.050 MHz, 156.250 MHz, and 156.700 MHz; *see also* “Frequencies” tab. *See* 47 C.F.R. § 80.373(f), including accompanying tables and notes.

(continued...)

claims that “interference from its proposed operations” on these frequencies, 156.050 MHz, 156.250 MHz, and 156.700 MHz, “is highly unlikely, as there are no other licensees on the specified channels within its proposed area of operation.”<sup>19</sup> Granite asserts that “this maritime spectrum will enhance [its] public safety systems in the coverage areas (footprint) where alternative usable VHF spectrum is not readily available.”<sup>20</sup> Furthermore, Granite argues that its “use of Part 80 frequencies meet[s] interoperability capability by fulfilling the spectrum requirements of the frequency combining equipment and will allow federal, state, tribal, and local government agencies to share the infrastructure without having to have two different radios.”<sup>21</sup> In addition, Granite seeks to add public safety frequencies allocated under Part 90 at these locations.<sup>22</sup> Because the requested maritime frequencies are designated as private communications frequencies under Part 80,<sup>23</sup> the County requests a waiver of Sections 80.105, 80.373(f), 80.203, and 80.213.<sup>24</sup>

6. On February 4, 2008, the Public Safety and Homeland Security Bureau (Bureau) issued a *Public Notice* seeking comment on the application and waiver request.<sup>25</sup> The Bureau also sought comment on whether the 700 MHz public safety band would provide a viable alternative, in light of the approaching digital television transition date (then scheduled to occur on February 17, 2009) and the Commission’s actions to facilitate a 700 MHz nationwide, interoperable broadband public safety network.<sup>26</sup> No comments addressing the merits of the application and waiver request were filed in response to the *Public Notice*.

7. *Maritime Ship and Private Coast Station Frequencies.* The Commission’s rules provide that frequencies in the maritime VHF MHz band are allocated primarily for maritime use under Part 80 of the rules.<sup>27</sup> Maritime frequencies allocated in the VHF MHz band under Part 80 are available for

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The three frequencies are on private communication channels allocated under Part 80 for maritime use (Channels 01A, 05A, 14). See 47 C.F.R. § 80.373(f) tables and notes associated with these channel designators.

<sup>19</sup> Amended Waiver Request at 5.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.*

<sup>22</sup> See 47 C.F.R. Part 90, Subpart B. Granite seeks to add fifteen public safety frequencies, which are allocated under Part 90, at eight locations, including two “Montana Common Mutual Aid designated VHF frequencies and five . . . UHF frequencies.” See Amended Waiver Request at 5.

<sup>23</sup> See 47 C.F.R. § 80.373(f).

<sup>24</sup> See 47 C.F.R. §§ 80.105, 80.373(f), 80.203, and 80.213. Section 80.105 addresses the general obligations of coast stations. See 47 C.F.R. § 80.105. Section 80.373(f) designates the private communications frequencies. See 47 C.F.R. § 80.373(f). Section 80.203 addresses authorization of transmitters for licensing in the maritime services. See 47 C.F.R. § 80.203. Section 80.213 addresses modulation requirements. See 47 C.F.R. § 80.213.

<sup>25</sup> See Public Safety and Homeland Security Bureau Seeks Comment on Applications and Requests for Waiver Filed by the County of Beaverhead, County of Granite, and County Silverbow, Montana to Operate Public Safety Radio Systems Using Part 80 Maritime VHF Frequencies, *Public Notice*, 23 FCC Rcd 1641 (PSHSB 2008) (*Public Notice*).

<sup>26</sup> See *id.* at 4, citing Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229; Development of Operational, Technical and Spectrum Requirements for Meeting Federal State and Local Public Safety Communications Requirements through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

<sup>27</sup> See 47 C.F.R. §§ 80.371(c), 80.373(f).

assignment either as public correspondence frequencies to ship and public coast stations<sup>28</sup> or as private communications frequencies for ship-to-ship and ship-to-private coast communications.<sup>29</sup> The three maritime frequencies that Granite requests, 156.050 MHz, 156.250 MHz, and 156.700 MHz, are designated for communications between ship and private coast stations (ship-to-private coast station frequencies) under Section 80.373.<sup>30</sup> Specifically, these three frequencies are designated for inter-ship and ship-to-coast port operations communications (*i.e.*, communications in or near a port, in locks or in waterways, which relate to the operational handling, movement, and safety of ships).<sup>31</sup> Also, Part 80 designates 156.050 MHz for commercial operations where it is not designated for port operations.<sup>32</sup> The Allocation Table also provides that Federal stations may be authorized for inter-ship and navigational communications, for US Coast Guard stations in support of port operations, and for vessel traffic services.<sup>33</sup>

### III. DISCUSSION

#### A. Section 337(c) Analysis

8. Section 337(c) of the Act provides that the Commission “shall waive . . . its regulations implementing th[e] Act (other than its regulations regarding harmful interference) to the extent necessary to permit” entities “seeking to provide public safety services” to use unassigned spectrum not allocated to public safety if the Commission makes five specific findings: (i) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use; (ii) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission’s regulations; (iii) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made; (iv) the unassigned frequency was allocated for its present use not less than two years prior to the date on which the application is granted; and (v) granting such application is consistent with the public interest.<sup>34</sup>

9. When considering requests under Section 337(c), we must initially determine that the applicant is an “entity seeking to provide public safety services.”<sup>35</sup> The statute describes public

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<sup>28</sup> See 47 C.F.R. § 80.371(c). Public correspondence communications are personal or private communications between two or more persons. Reflecting that public correspondence service is offered by coast stations on a common carrier basis, public correspondence is defined more precisely under the Part 80 Maritime Service Rules as “[a]ny telecommunication which the offices and stations must, by reason of their being at the disposal of the public, accept for transmission.” See 47 C.F.R. § 80.5.

<sup>29</sup> See 47 C.F.R. § 80.373(f). Private correspondence consists of communications serving the user’s business and operational needs.

<sup>30</sup> See 47 C.F.R. § 80.373(f), including accompanying tables and notes.

<sup>31</sup> See *id.* (describing conditions for use as Coast Guard Vessel Traffic Services (VTS) in certain areas). See also 47 C.F.R. § 80.5 (defining VTS as a “U.S. Coast Guard control service for ships in designated water areas to prevent collisions, grounding and environmental harm.”).

<sup>32</sup> See 47 C.F.R. §§ 80.5, 80.373(f) tables.

<sup>33</sup> See 47 C.F.R. § 2.106, Footnote US77.

<sup>34</sup> 47 U.S.C. § 337(c).

<sup>35</sup> *Id.* Section 337(f) defines the term “public safety services” as “services- (A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided— (i) by State or local government entities; or (ii) by non-government organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider.” 47 U.S.C. § 337(f).

safety services as services that are provided by state or local government entities or by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services.<sup>36</sup> Granite County states that its “system was engineered as a multi[-]cast county wide system for all county public safety services”<sup>37</sup> and that it provides “Law Enforcement, Fire/Wild Land Fire response, Emergency Medical services, . . . , Search and Rescue . . . [, and] Disaster Emergency [services].”<sup>38</sup> Based on the record, we find that Granite is an entity providing public safety services and that it is eligible to hold public safety authorizations in the Public Safety Pool.<sup>39</sup>

10. We next turn to the five-prong test under Section 337(c). We note that an applicant’s failure to meet any one of the five criteria constitutes sufficient cause for the Commission to deny a request for waiver under Section 337(c).<sup>40</sup> As discussed below, we find that Granite does not meet the first criterion of Section 337(c), *i.e.*, it has failed to demonstrate that no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use.

11. Granite rests its argument with respect to the first Section 337(c) criterion on an analysis of the unavailability of public safety spectrum in the VHF band, and contends that frequency bands other than the VHF band would not satisfy its requirements. Granite submits that for the Montana statewide system, “[m]any of the requirements have been recommended or mandated by the Montana State Interoperability Executive Council (Montana SIEC)[,]” including: (1) “the continued use of VHF high band[,]” (2) “Compatibility with narrowband (12.5 kHz) operation[,]” and (3) “P25 compatibility.”<sup>41</sup> The Montana SIEC “declared the VHF high band as the standard for the State of Montana” for the following reasons.<sup>42</sup> First, “continued use of VHF high band. . . will allow the most cost effective migration by minimizing the necessity to replace all equipment immediately[.] . . .”<sup>43</sup> Second, such VHF use “also ensures the continued compatibility with adjacent jurisdictions . . . and federal agencies.”<sup>44</sup>

12. To enable its member counties, including Granite, to meet the above requirements for participating in the Montana statewide interoperable VHF system, in 2004 the I15/90 Consortium retained an engineering consultant “to conduct a study of interoperable communications needs.”<sup>45</sup> Granite asserts that its consultant “constrain[ed] the solutions proposed to those using the VHF high band. . .” and “capable of operating on narrowband 12.5 kHz channels. . . [to] ensure that the system will meet the existing and anticipated FCC rules . . . for the VHF high band.”<sup>46</sup> Granite adds that operation on

<sup>36</sup> 47 U.S.C. § 337(f).

<sup>37</sup> See Granite Consortia Letter.

<sup>38</sup> See *id.*

<sup>39</sup> See 47 C.F.R. § 90.20(a)(1) (stating, in part, “[a]ny territory, possession, state, city, county, town . . . is eligible to hold authorizations in the Public Safety Pool . . .”).

<sup>40</sup> See South Bay Regional Public Communications Authority, *Memorandum Opinion and Order*, 13 FCC Rcd 23781, 23796 ¶ 33 (1998) (*South Bay*). Township of Cinnaminson, New Jersey, *Order*, 22 FCC Rcd 4583, 4585 ¶ 6 (PSHSB PD 2007) (*Cinnaminson*), citing University of Southern California, *Memorandum Opinion and Order*, 16 FCC Rcd 2978, 2984 ¶ 15 (WTB PSPWD 2001).

<sup>41</sup> Amended Waiver Request at 3.

<sup>42</sup> *Id.* at 3.

<sup>43</sup> *Id.* Granite further explains that using the VHF high band “will allow Montana to phase-in new equipment that is backward compatible with . . . older infrastructure.” *Id.* Granite notes that “all but one public safety agency in Montana currently use VHF radio systems.” *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 2.

<sup>46</sup> *Id.* at 3.

narrowband, 12.5 kHz channels, “increases compatibility with federal systems, such as the United States Forest Service and other agencies as they also transition to narrowband operation.”<sup>47</sup>

13. Granite submits that the “[u]se of the 150 MHz band is particularly well-suited for providing the coverage needed to reach the extensive geography of Montana.”<sup>48</sup> Granite adds that the “propagation characteristics of VHF frequencies will allow Montana to construct a system with fewer transmitters and with better signal penetration than . . . if it were required to use channels in other bands[,]” specifically referring to the 400, 700, and 800 MHz bands.<sup>49</sup> According to Granite, fewer sites using the VHF band are required “because VHF channels are less susceptible to attenuation from trees and foliage” and other variations in topography.<sup>50</sup>

14. Granite represents that it needs eighteen frequencies to participate in the IM system.<sup>51</sup> Granite acknowledges that two are “Montana Common Mutual Aid designated VHF frequencies” and five are UHF frequencies.<sup>52</sup> Further, Granite represents that only eight public safety frequencies are available and that therefore it needs “three . . . Part 80 maritime frequencies to complete its system.”<sup>53</sup> Granite states that its frequency coordinator, the American Association of State Highway and Transportation Officials (AASHTO), “conducted a thorough search of the Public Safety Radio Service frequency pool and could not identify suitable frequencies to satisfy all of the system operating parameters.”<sup>54</sup> The County submits a frequency showing letter from AASHTO, stating that Granite’s “proposed fixed transmitter locations are significantly higher than average terrain,” making “frequencies which appear to be usable not assignable.”<sup>55</sup> Moreover the AASHTO letter attaches the objections filed by other Public Safety Coordinators, “making those frequencies not available.”<sup>56</sup>

15. Based on the information before us, we find that Granite’s assertions and the AASHTO frequency showing do not demonstrate that Granite gave adequate consideration under the Section 337(c) waiver standard to public safety frequencies outside the VHF band that might be available. Although Granite contends that non-VHF channels would not satisfy its requirements,<sup>57</sup> we find that this is not sufficient to meet the statutory waiver standard. The Commission has previously apprised Section 337 applicants as follows:

[T]he statutory language is clear in that it expressly requires that no other spectrum allocated to public safety services be available without any qualification. Thus, we believe that the statute requires that there be no unassigned public safety spectrum, or not

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 4.

<sup>49</sup> *Id.*

<sup>50</sup> *See id.* (also asserting that VHF band transmissions “generally are able to: (1) diffract over hills and around other obstacles and (2) penetrate buildings more effectively . . . so as to reduce ‘dead’ spots within the service footprint.”).

<sup>51</sup> *See* Amended Waiver Request at 5.

<sup>52</sup> *See id.*

<sup>53</sup> *Id.*

<sup>54</sup> Initial Waiver Request.

<sup>55</sup> File No. 0002780258 (attaching Letter from Cindy Matzel, RS/AASHTO, re: Granite, County of, filed Nov. 21, 2006 (AASHTO Letter) (attaching Frequency Showing)).

<sup>56</sup> AASHTO Letter (also attaching objections from APCO and FCCA that contain certain technical objections from these other public safety frequency coordinators to particular frequencies requested by Granite County).

<sup>57</sup> *See* Waiver Clarification at 1.

enough for the proposed public safety use, in any band in the geographic area in which the Section 337 applicant seeks to provide public safety services.<sup>58</sup>

Consistent with the Commission's position, the Bureau and the Wireless Telecommunications Bureau have rejected the argument that an applicant must only show either the unavailability of frequencies in its preferred public safety band or, conversely, the unsuitability of frequencies in other public safety bands, for purposes of satisfying Section 337(c) of the Act.<sup>59</sup>

16. In the present case, we find that Granite does not meet the Section 337(c) standard because it analyzed only the availability of 156-162 MHz spectrum in the VHF high band in which the Montana IM system operates. Specifically, we find that the AASHTO frequency showing only demonstrates that an insufficient number of VHF channels are available in the Public Safety Pool,<sup>60</sup> and therefore is inadequate to show the unavailability of public safety frequencies in other bands in the geographic area where Granite proposes to operate on the requested maritime frequencies. Thus, merely submitting that "alternative usable VHF [public safety] spectrum is not readily available"<sup>61</sup> or that other public safety bands would neither satisfy certain system parameters nor provide desired propagation<sup>62</sup> and infrastructure reuse benefits,<sup>63</sup> is not sufficient to satisfy the first criterion under Section 337(c).<sup>64</sup> Moreover, as noted above, Granite has stated that it also intends to use at least five UHF frequencies at five proposed sites.<sup>65</sup> The County, however, does not address why other frequencies in the UHF band are not available for any part of its proposed operations.<sup>66</sup> Based upon our review of the record, we note that a sufficient showing pursuant to Section 337(c) requirements would have included (i) a complete analysis of the availability of public safety frequencies in any spectrum band and (ii) the results of a frequency coordinator's thorough search specifying that the coordinator searched all frequency bands to determine whether any other public safety spectrum was available.<sup>67</sup> Thus we find that, without the necessary

<sup>58</sup> In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended, WT Docket No. 99-87, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 22709, 22769 ¶ 132 (2000) (*Balanced Budget Act Report and Order*) (footnotes omitted); see also H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 579-80 (1997) ("Conference Report") ("spectrum must not be immediately available on a frequency already allocated to public safety services.")

<sup>59</sup> See County of Marin, California, *Order*, 22 FCC Rcd 9165, 9167-68 ¶ 6 (PSHSB PD 2007); State of Ohio, *Memorandum Opinion and Order*, 17 FCC Rcd 439, 446-47 ¶ 15 (WTB PSPWD 2002) (*Ohio*); State of Tennessee Department of Transportation, *Order on Reconsideration*, 15 FCC Rcd 24645, 24648-49 ¶ 9 (WTB 2000) (*Tennessee DOT*).

<sup>60</sup> See AASHTO Letter and Frequency Showing.

<sup>61</sup> Amended Waiver Request at 4. See also Waiver Clarification at 1.

<sup>62</sup> See Amended Waiver Request at 4 (regarding the advantages of VHF spectrum to address terrain, coverage, and building penetration challenges with the fewest number of base stations).

<sup>63</sup> See *id.* at 3-4 (asserting that VHF spectrum will allow for reuse of Granite's existing VHF infrastructure).

<sup>64</sup> See, e.g., New Hampshire Department of Transportation, *Memorandum Opinion and Order*, 14 FCC Rcd 19438, 19442 ¶ 8 (WTB 1999) (*New Hampshire DOT*) (finding that "higher costs or less than optimal propagation characteristics [do not] render radio frequencies in the 800 MHz band 'unavailable' to satisfy [the] requested public safety use under Section 337(c) of the Act.")

<sup>65</sup> See File No. 0002780258, "Locations" tab.

<sup>66</sup> See File No. 0002780258 (as amended April 16, 2007 (attaching Consortia Letter)). Granite County's Frequency Showing also examined Industrial/Business VHF frequencies listed under 47 C.F.R. § 90.35(b)(3).

<sup>67</sup> See City of Boston, Massachusetts, *Order*, 22 FCC Rcd 18393, 18396-97 ¶¶ 6-7 (PSHSB PD 2007) (finding engineering report "spectrum analysis" and letter from frequency coordinator sufficient); *Ohio*, 17 FCC Rcd at 447 ¶ 16. The Commission's interpretation of Section 337(c) of the Act "requires that there be no unassigned public safety spectrum, or not enough for the proposed public safety use, in any band in the geographic area in which the Section

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frequency search, Granite does not satisfy the first criterion of Section 337(c), and therefore cannot obtain relief pursuant to Section 337.

17. However, our finding Granite does not warrant waiver relief under Section 337 does not foreclose our consideration of Granite's alternative request for waiver relief under Section 1.925. The Commission has stated that "an applicant that could not obtain relief pursuant to Section 337 because public safety spectrum was available in other bands could nonetheless seek a rule waiver pursuant to Section 1.925 of the Commission's Rules."<sup>68</sup> Moreover, Section 1.925 itself provides us the discretion to consider whether to analyze a request for waiver under that rule.<sup>69</sup> The particular findings, including the public interest findings,<sup>70</sup> that we make in a waiver analysis pursuant to that section rest on the Commission's plenary authority under the Act to make rules and regulations necessary to achieve the Commission's over-arching statutory purposes, including "promoting safety of life and property through the use of radio communication."<sup>71</sup> The discretion that Section 1.925 confers upon the Commission provides the necessary flexibility to achieve the statutory objective of safeguarding life and property by considering an applicant's alternative request for waiver relief according to the standards that an applicant must meet under the rule.<sup>72</sup> Furthermore, we have exercised such discretion to consider requests for alternative waiver relief when applicants have asserted a *prima facie* analysis that warrants additional examination under Section 1.925.<sup>73</sup> From our review of the record in this case, we find that, despite its failure to meet the first criterion for receiving Section 337 waiver relief, Granite has otherwise supplemented its waiver request with sufficient information for us to consider whether waiver relief is justified under Section 1.925. We therefore analyze Granite's alternative request for waiver relief pursuant to Section 1.925.

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337 applicant seeks to provide public safety services." *Balanced Budget Act Report and Order*, 15 FCC Rcd at 22769 ¶ 132.

<sup>68</sup> *Id.* at 22769 ¶ 132 n.366, citing 47 C.F.R. § 1.925. See also Letter to Alan S. Tilles, Esq., 22 FCC Rcd 13577, 13581 & n.30 (WTB Mobility Div.) (noting that "[i]n addition to the Section 337 process, [public safety] entities can also seek a conventional waiver under Section 1.925 of rules.>").

<sup>69</sup> See 47 C.F.R. § 1.925(a) (stating that "[t]he Commission *may* waive specific requirements of [the rules on its own motion or upon request.]" (emphasis added)).

<sup>70</sup> See 47 C.F.R. § 1.925(b)(3)(i)-(ii); see *infra* para. 18.

<sup>71</sup> 47 U.S.C. § 151; see also 47 U.S.C. §§ 154(i), 303(r).

<sup>72</sup> See 47 C.F.R. 1.925 (providing that "[t]he Commission *may* waive specific requirements of the rules upon its own motion or upon request.>"). (emphasis added). See 47 C.F.R. § 1.925(b)(3)(i)-(ii) (setting forth the criteria); see *infra* para. 18.

<sup>73</sup> See *Ohio*, 16 FCC Rcd at 451 ¶22 (finding that "[w]hile the need for a particular band does not establish the unavailability of public safety spectrum for purposes of Section 337 . . . , in combination with the other circumstances of [the] case," a waiver under Section 1.925 "for [the] purpose [of an interoperable network promoting effective public safety communications] is in the public interest."). However, consideration of a Section 1.925 waiver request does not predetermine that we will grant relief. See, e.g., *Tennessee DOT*, 15 FCC Rcd at 24650 ¶ 12 (finding that applicant had not met its burden of showing that Section 1.925 waiver relief is justified); *New Hampshire DOT*, 14 FCC Rcd at 19442-43 ¶¶ 10-11 (making similar findings). Generally, we have not proceeded to consider whether waiver relief is warranted under Section 1.925 when public safety entities have submitted vague and insufficiently specific information. See *Cinnaminson*, 22 FCC Rcd at 4585-86 ¶ 7 (applicant did not make any assertions specific to the requested frequency pair); *City of Richmond, Virginia, Order*, 21 FCC Rcd 14384, 14390 ¶ 15 (PSHSB PD 2006) (granting limited waiver relief under Section 337 but further finding that the applicant did not provide sufficient information about all of its proposed sites or implementation schedule to evaluate its request concerning the entire economic area).

**B. Section 1.925 Waiver Analysis**

18. To obtain a waiver under Section 1.925 of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>74</sup> or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>75</sup> Thus, an applicant not warranting Section 337(c) waiver relief but, in the alternative, seeking a waiver under Section 1.925 continues to face a high hurdle, and must plead with particularity the facts and circumstances that warrant a waiver.<sup>76</sup>

19. For our waiver analysis, we consider the following rule sections: (i) Section 80.373(f), which designates the three requested frequencies under consideration here for specific ship and private coast station uses,<sup>77</sup> (ii) Section 80.105 regarding such stations' general obligations,<sup>78</sup> and (iii) the technical requirements set forth in Part 80, Subpart E.<sup>79</sup> Regarding the technical requirements, we note that Granite has requested a waiver of Sections 80.203 and 80.213<sup>80</sup> but not Sections 80.205, 80.211, and 80.215.<sup>81</sup> We recognize, however, that Granite generally "requests waiver of the [Part 80] regulations appropriate to permit private land mobile use of the spectrum consistent with the technical specifications set forth in [its] application."<sup>82</sup> As a result, we consider, on our own motion, Granite's request for relief as including Sections 80.205, 80.211, and 80.215.<sup>83</sup>

20. The "core purpose" for which maritime frequencies have been allocated under Part 80 is to "serve the communications needs of marine vessels, especially with respect to communications in support of the safety of life and property at sea and on inland waterways."<sup>84</sup> In this regard, the Commission's Part 80, Subpart H rules allocate maritime frequencies for ship and private coast station licensees and specifically contain technical rules to ensure interference protection for communications

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<sup>74</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>75</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>76</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>77</sup> See 47 C.F.R. § 80.373(f), accompanying tables and notes.

<sup>78</sup> See 47 C.F.R. § 80.105.

<sup>79</sup> See 47 C.F.R. Part 80, Subpart E.

<sup>80</sup> See Waiver Clarification. See 47 C.F.R. Part 80, Subpart E, §§ 80.203, 80.213. See *supra* note 24 (generally describing Sections 80.203 and 213).

<sup>81</sup> See 47 C.F.R. Part 80, Subpart E, §§ 80.205, 80.211, 80.215. Section 80.205 addresses bandwidths, with an accompanying table that "gives the class of emission and corresponding emission designator and authorized bandwidth." See 47 C.F.R. § 80.205. Section 80.211 addresses emission limitations. See 47 C.F.R. § 80.211. Section 80.215 addresses transmitter power limitations. See 47 C.F.R. § 80.215.

<sup>82</sup> See Waiver Clarification.

<sup>83</sup> See 47 C.F.R. §§ 80.205, 80.211, 80.215. Under Section 1.3 of the Commission's rules, we may consider on our own motion whether to waive those rules for which Granite has not requested relief, for good cause shown. See 47 C.F.R. § 1.3.

<sup>84</sup> See *In the Matter of Maritel, Inc. and Mobex Network Services, LLC*, WT Docket No. 04-257, *Report and Order*, 22 FCC Rcd 8971-72 ¶ 1 (2007) (*Coast Station Flexibility Order*). See generally *In the Matter of Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 16949, 16982-84 ¶¶ 66, 68 (1997).

between ship and public coast stations and ship to private coast stations.<sup>85</sup> This “core purpose” applies to all Part 80 rule requirements.

21. To ensure that unintended erosion of the maritime spectrum and consequent derogation of the core purpose for that spectrum does not occur, the Commission has stressed that requests to use the spectrum outside of the Part 80 framework will receive close scrutiny.<sup>86</sup> For waiver applicants seeking to use maritime spectrum for land mobile radio operations, the Commission has issued guidance in the *Coast Station Flexibility Order* on “some of the factors” that it will consider in evaluating waiver requests filed pursuant to Section 1.925 of the Commission’s rules.<sup>87</sup> In that order, the Commission suggested the following five factors that waiver applicants should explain:

- how waiver applicants intend to provide priority to maritime communications or why they believe the requirement should be waived;
- the distance of a proposed land mobile radio operation from the nearest navigable waterways;
- for requested waivers of specific Part 80 technical requirements, such as power limits and emission masks, the magnitude of the divergence from Part 80;
- a showing that alternative spectrum that could accommodate the proposed PLMR or other land mobile radio service is unavailable or unsuitable for that purpose;
- a showing that authorization of the proposed operation, and grant of the associated waiver(s), would benefit public safety or homeland security “will be a factor militating in favor of grant of a waiver.”<sup>88</sup>

Although Granite filed its request for relief prior to the Commission’s release of the *Coast Station Flexibility Order* outlining the above factors, we find that examining Granite’s request in light of that guidance is appropriate in order to fully evaluate its waiver request and to provide guidance to prospective waiver applicants seeking to use ship and private coast station as well as VPC frequencies for public safety communications under Part 90.<sup>89</sup> We thus evaluate all of the suggested factors together in analyzing a waiver request under Section 1.925 to use ship and private coast station frequencies to ensure that no derogation of the core purpose for the allocation of maritime spectrum will result if we find that waiver relief is warranted.<sup>90</sup>

22. *Providing priority to maritime communications or explaining why the requirement should be waived.* The first factor applies to waiver applicants seeking VPC or AMTS spectrum and requires that VPC public coast stations serving stations on land provide priority to maritime

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<sup>85</sup> See 47 C.F.R. §§ 80.371(c), 80.373(f), accompanying tables and notes.

<sup>86</sup> See *Coast Station Flexibility Order*, 22 FCC Rcd at 8995 ¶ 21 (stating the Commission’s concern over use of VHF Public Coast Station (VPC) and automated maritime telecommunications system (AMTS) spectrum pursuant to non-maritime radio service rules).

<sup>87</sup> See *id.* at 8986-87 ¶ 26 (2007).

<sup>88</sup> See *id.*

<sup>89</sup> See *supra* note 86.

<sup>90</sup> The *Coast Station Flexibility Order* addressed waiver requests to use VPC and AMTS spectrum. See *Coast Station Flexibility Order*, 22 FCC Rcd at 8986-87 ¶ 26.

communications.<sup>91</sup> Licensees authorized to use ship and private coast station frequencies are not subject to the same requirement, and Granite does not address this factor. However, from reviewing the entire record, we find that Granite's proposed measures to address potential interference risk are sufficient to assure us, with one exception as addressed below,<sup>92</sup> that Granite will provide an equivalent "priority" in the sense that Granite will be able to ensure maritime communications are "transmitted immediately, reliably, and accurately."<sup>93</sup>

23. For example, Granite states that it will "agree to either eliminate any harmful interference at its expense or cease operation on the requested frequencies to provide interference protection, even if Granite County's operations are under Part 90 power and height limitations."<sup>94</sup> Additionally, Granite submits that it has a "point of contact for any current interference issue and would continue to use this method to [e]nsure immediate interference assistance."<sup>95</sup> We find that the record supports Granite's representations. Granite asserts that it "obtained frequency coordination demonstrating that it provides the required protection to public coast stations as well as incumbent licensees or geographic-area-based co-channel licensees."<sup>96</sup> Granite submits a spacing study<sup>97</sup> to show that its proposed operations under Part 90 on the maritime frequencies are not likely to create harmful interference to licensees on either private communications frequencies<sup>98</sup> or correspondence frequencies in VHF Public Coast Station Areas (VPCSA's).<sup>99</sup> In particular, we note that all licensees listed in the spacing study are public safety licenses; no Part 80 licensees operate in the vicinity.<sup>100</sup>

24. Our independent engineering analysis confirms that, with one possible exception, the County's operation on the three ship and private coast station maritime frequencies is not likely to create harmful interference to radio communications on co-channel or adjacent-channel VHF frequencies or other licensees operating in Montana.<sup>101</sup> The listing in Granite's study of such licensees in the VHF band shows one potentially affected adjacent channel licensee, the State of Montana Department of Transportation (Montana DOT),<sup>102</sup> operating on frequency 156.050 MHz. For this requested frequency, Granite submits a letter of concurrence from Montana DOT, stating that the agency has "no objections to Granite . . . using this frequency as [a] receive input frequency only" at the specified location, provided

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<sup>91</sup> See 47 C.F.R. § 80.123 (requiring priority to maritime communications). *But see Coast Station Flexibility Order*, 22 FCC Rcd at 8987 n.114 (stating that "if the applicant does not seek a waiver of the priority requirement, but instead intends to comply with that requirement, and satisfactorily demonstrates how it will achieve such compliance, that showing will be a factor favoring grant of the waiver(s)"). *See also id.* at 8991 ¶ 15.

<sup>92</sup> *See infra* para. 26.

<sup>93</sup> *See generally Coast Station Flexibility Order*, 22 FCC Rcd at 8991 ¶ 15.

<sup>94</sup> Amended Waiver Request at 5.

<sup>95</sup> *Id.*

<sup>96</sup> Amended Waiver Request at 5.

<sup>97</sup> File No. 0002780258, as amended April 16, 2007 (attaching Exhibit "Marine Showing") (Marine Showing).

<sup>98</sup> *See* 47 C.F.R. 80.373(f).

<sup>99</sup> *See* 47 C.F.R. 80.371(c).

<sup>100</sup> That is, the Commission's Universal Licensing System does not reflect any licenses for any co-channel Part 80 coast stations in the vicinity. However, it is possible that ship stations authorized under Part 80 – either pursuant to licenses with addresses outside the vicinity or on vessels that are licensed by rule – do or will operate on these frequencies in the vicinity, given the existence of at least one waterway in the area that is designated as navigable. *See* 47 C.F.R. § 80.13(c) (addressing ship stations licensed by rule).

<sup>101</sup> *See* Marine Showing.

<sup>102</sup> *See id.*

that the “County will take . . . responsibility for correcting the problems immediately . . . should any interference problems arise as a result . . . .”<sup>103</sup> Based on the record, we therefore find that Granite has demonstrated that it will commit to providing a level of interference protection so as to ensure interference-free inland maritime communications on a primary basis sufficient to support its waiver request.

25. *The distance of a proposed land mobile radio operation from the nearest navigable waterways.* Concerning navigable waterways that may be proximate to Granite’s proposed area of operation, we note that the Commission does not “require[e] as an absolute precondition to waiver relief that the proposed land mobile radio operation be located at a fixed minimum distance from the nearest navigable waterway . . . .”<sup>104</sup> Moreover, specifically regarding such waterways in Montana, case precedent has recognized that a high demand for maritime commercial communications or port operation communications does not exist within the state.<sup>105</sup> Consequently, this lack of demand has supported a determination that “Section 80.373(f) would not be served by application to the circumstances presented” in a request for waiver.<sup>106</sup> Also, given this situation with regard to Montana, which is not in a coastal area, we find that Vessel Traffic Services are not a consideration in Granite’s case, because there are no port or vessel traffic service areas in the license areas under consideration (and thus no authorized Federal operations). Therefore, on the record here, we attribute significant weight to this treatment of maritime communications in Montana but also address the other factors that the Commission set forth in its guidance.<sup>107</sup>

26. *With respect to requested waivers of Part 80 technical requirements, such as power limits and emissions masks, the magnitude of divergence from Part 80 technical requirements will be considered.* Granite proposes operations on the three requested ship and private coast station frequencies at one of its five proposed permanently fixed locations (Location 1).<sup>108</sup> Given the site elevation for proposed Location 1,<sup>109</sup> we find that the primary technical factor to evaluate here is the magnitude of divergence from the Part 80 power limitations.<sup>110</sup> Regarding such divergence, the Commission clarified

<sup>103</sup> See File No. 0002780258, attached “Marine LOC” (filed April 16, 2007) (Marine LOC) (Statement of Concurrence from Ken Bruski, Chief, Communications Bureau, Montana Department of Transportation, to the FCC, Gettysburg, PA 17325, dated April 12, 2007) (noting that Montana DOT “operat[es] in . . . the vicinity of Butte, Montana on frequency 156.060 MHz” under call sign KOA554 and that Granite’s “responsibility would include any cost or actions . . . to correct the interference[,] . . . including moving to a different frequency.”). We find that Granite County does not propose to transmit on the three ship and private coast station frequencies at the location specified in the Montana DOT letter. See File No. 0002780258, “Locations” tab (proposed location no. 3, at Rumsey Mountain).

<sup>104</sup> See *Coast Station Flexibility Order*, 22 FCC Rcd at 8986-87 ¶ 26 n.115 (also stating that the Commission has not “establish[ed] a ‘safe harbor’ distance beyond which a proposed land mobile radio operation would be presumed to be entitled to waiver relief.”).

<sup>105</sup> See *State of Montana, Order*, 19 FCC Rcd 9816, 9818-19 ¶ 6 (WTB PSCID 2004) (*State of Montana*) (stating that licensing a frequency to Montana that was adjacent to a ship and private coast station frequency would create little risk of harmful interference to ship and coast communications). See generally Amendment of the Commission’s Rules Regarding Maritime Automatic Identification Systems, *Second Report and Order*, WT Docket No. 04-344, FCC 08-208 (released Sept. 19, 2008) at ¶ 17 (considering that “there is less maritime activity in inland VPCSAAs” (such as the ones that Montana is located in)).

<sup>106</sup> See *State of Montana*, 19 FCC Rcd at 9818-19 ¶ 6.

<sup>107</sup> See *Coast Station Flexibility Order*, 22 FCC Rcd at 8986-87 ¶ 26.

<sup>108</sup> See File No. 0002780258, “Locations” tab.

<sup>109</sup> See *id.* (listing 1621.0 m elevation for Location 1). See also AASHTO Letter (referring to “proposed fixed transmitter locations [at] significantly higher [than] average terrain . . .”).

<sup>110</sup> See generally *Coast Station Flexibility Order*, 22 FCC Rcd at 8986-87 ¶ 26.

that “[r]elatively small variations” from Part 80 technical requirements “will be considered more favorably than large variations.”<sup>111</sup> Section 80.215 limits the transmitter output power of coast stations and mobile units in the 156-162 MHz band to 50 watts and 25 watts, respectively.<sup>112</sup> In contrast, Granite’s proposed output power at this location and for its mobile units is 100 watts.<sup>113</sup> We find that Granite has not specifically explained the impact of the magnitude of this variance concerning power limits on the risk of potential interference to inland maritime communications. In this connection, we also recognize that Granite has not submitted a showing that addresses why waiver relief of Sections 80.203, 80.213, 80.205, and 80.211 is warranted. We find that Granite’s spacing study provides support that alleviates but does not completely remove our concern regarding the technical requirements of Sections 80.203, 80.213, 80.205, and 80.211 in relation to a potential inference risk from Granite’s proposed operation under the requirements of Part 90. Accordingly, in light of our analysis of the other factors below, we will condition any waiver relief granted herein on Granite’s complying with the Part 80 power limitations and other technical requirements, as may be applicable.

27. *A showing that alternative spectrum that could accommodate the proposed PLMR or other land mobile radio service is unavailable or unsuitable for that purpose.* For purposes of our Section 1.925 analysis, we find persuasive Granite’s submission that spectrum other than the VHF band is unsuitable for expansion of its VHF system due to differences in propagation characteristics, weaker signal penetration, and the need for more sites to cover the proposed service area. Granite states that the propagation characteristics of VHF frequencies will allow constructing a system “with fewer transmitters and with better signal penetration than . . . if [Granite] were required to use channels” in the 400, 700, or 800 MHz bands.<sup>114</sup> We also note Granite’s reference to Montana’s estimate that three to four times more sites “would be required to provide comparable coverage using 700 MHz or 800 MHz technology.”<sup>115</sup> Further, Granite states that other spectrum allocations are not technically or economically feasible . . . .<sup>116</sup> and that it “must . . . establish an effective public safety communications system which interleaves into the State of Montana’s Statewide public safety communications system . . . .”<sup>117</sup> Regarding this statement, we again note that the Montana SIEC set the VHF high band as the standard for the statewide interoperable system that Granite must follow.<sup>118</sup> In this regard, granting the County waiver relief will promote the public interest by permitting Granite to enhance its county-wide communications capability<sup>119</sup> and to integrate its proposed operations with Montana’s statewide VHF system.<sup>120</sup>

28. *A showing that authorization of the proposed operation, and grant of the associated waiver(s), would benefit public safety or homeland security will be a factor militating in favor of grant of*

<sup>111</sup> *See id.*

<sup>112</sup> *See* 47 C.F.R. § 80.215(c)(1), (e)(1) (limiting ship stations in the VHF band to 25 watts).

<sup>113</sup> *See* File No. 0002780258, “Locations” Tab, Location 1 – fixed, Location 4 – Mobile. *See also id.* for Location 8.

<sup>114</sup> Amended Waiver Request at 4.

<sup>115</sup> *Id.* (explaining that fewer sites using the VHF band are required “because VHF channels are less susceptible to attenuation from trees and foliage” and other variations in topography. VHF band transmissions “generally are able to: (1) diffract over hills and around other obstacles and (2) penetrate buildings more effectively . . . so as to reduce ‘dead’ spots within the service footprint.”).

<sup>116</sup> Waiver Clarification at 1.

<sup>117</sup> *Id.* (stating that Granite is “part of the . . . Montana Interoperability VHF System . . .”). *See also* Amended Waiver Request at 4 (asserting Part 80 frequencies are needed for “interoperability capability”).

<sup>118</sup> *See* Amended Waiver Request at 3.

<sup>119</sup> *See* Amended Waiver Request at 7.

<sup>120</sup> *See* Waiver Clarification at 2.

*a waiver.* We find that Granite satisfies this criterion for the following reasons. First, Granite’s operation on the Montana statewide system is in the public interest because that system is designed to “provide seamless communication for first responders.”<sup>121</sup> Also, Granite states that “enhancing [Granite’s] interoperability and increasing the effectiveness of [its] public safety and homeland security communications systems” will further improve its ability to partner with the I-15/90 Consortium, Montana, and Federal entities.<sup>122</sup> Further, as Granite notes, “the State will be able to avoid material lapses in public safety communications capabilities during system migration as well as meet the individual transition schedules and funding requirements of participating agencies.”<sup>123</sup> Consequently, we find that granting the instant request will improve the interoperability and the public safety responsiveness of Granite with its public safety community partners – local and state agencies, Tribal Nations, and federal government users.<sup>124</sup> Granite adds that such partnering will contribute to spectrum efficiency.<sup>125</sup> Based on the record, we therefore find that granting the County’s application will serve the public interest by promoting the Commission’s goals of providing for flexible and efficient use of the spectrum, consistent with one of the Commission’s over-arching purposes as “promoting safety of life and property through the use of radio communication.”<sup>126</sup>

29. *Conditional Grant.* Based on our findings and review of the record, we conclude that the underlying purpose of Sections 80.105 and 80.373(f) would not be served or would be frustrated by application to instant case and that grant of the Waiver Request is in the public interest. Because we find that Granite’s request substantially addresses the factors articulated by the Commission in the *Coast Station Flexibility Order* to evaluate waiver requests to use maritime spectrum for PLMR purposes, we waive those two rule sections as conditioned below, so that Granite may use three Part 80 ship and private coast station frequencies. Considering together Granite’s representations of its measures to resolve any interference problems, the weight of Granite’s spacing study, and the lack of significant demand for maritime communications in Montana, we find that the County’s proposed operations on the three frequencies are not likely to pose harmful interference risk to co-channel and adjacent-channel licensees on either public correspondence frequencies for VPCSA<sup>127</sup> or private communications frequencies<sup>128</sup> allocated under Part 80. We therefore find that the underlying purpose of Sections 80.105 and 80.373(f) – that is, respectively, to impose general coast station obligations and to designate certain VHF channels for particular ship and private coast station commercial and port operations communications in order that interference from other use is mitigated<sup>129</sup> – would not be served or would be frustrated by application to the present case.

30. However, we are not persuaded that a waiver with respect to Sections 80.203, 80.205, 80.211, 80.213, and 80.215 of the Part 80 technical requirements is warranted in this instance, because Granite has not explained the magnitude of the divergence of its proposed operating parameters from Part 80 technical requirements. As observed above, although sufficiently material to support waiver relief, Granite’s spacing study and representations regarding measures for interference protection do not

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<sup>121</sup> Consortia Letter.

<sup>122</sup> Amended Waiver Request at 7.

<sup>123</sup> *Id.* at 3-4.

<sup>124</sup> *See id.*

<sup>125</sup> *See* Amended Waiver Request at 7.

<sup>126</sup> 47 U.S.C. § 151.

<sup>127</sup> *See* 47 C.F.R. § 80.371(c). In Granite County’s case, the potentially affected VPCSA is VPCSA 30.

<sup>128</sup> *See* 47 C.F.R. § 80.373(f).

<sup>129</sup> *See* 47 C.F.R. § 80.373(f), accompanying tables and notes.

eliminate our concern of potential inference risk from Granite's proposed operation under Part 90.<sup>130</sup> We therefore condition Granite's use of the three requested ship and private coast station frequencies on operating its fixed and mobile stations consistent with Part 80 power limitations, emissions masks,<sup>131</sup> and other Part 80 technical requirements.<sup>132</sup> Should Granite later prefer to operate at location no. 1 on the three subject maritime frequencies under Part 90, Granite may file an application to modify its license; and if it then appropriately addresses the magnitude of divergence of its desired operating parameters from Part 80, we will consider modifying this condition. We further condition Granite's waiver relief on (i) operating under the terms of the letter of concurrence from Montana DOT and (ii) protecting any maritime communications, including Coast Guard operations, from interference as set forth below.<sup>133</sup>

31. We emphasize that it is in the public interest to ensure that any primary maritime communications that occur in Montana are protected from interference. To provide the appropriate protection in view of Granite's proposed use, we will condition the County's authorization to use the requested maritime frequencies on providing interference protection to any current or future Coast Guard and other marine operations. Specifically, if licensees on Part 80 maritime frequencies or the Coast Guard report interference, Granite must cease operating on the three ship and private coast station frequencies immediately and discontinue such operation.<sup>134</sup> Granite must take immediate steps to address and otherwise resolve any harmful interference experienced by any licensee authorized to use Part 80 frequencies or by the Coast Guard. We further expect that, through its capability for monitoring interference, Granite will coordinate with the Coast Guard and the State of Montana to ensure that all contemplated operations on the shared frequencies pose no potential for harmful interference to maritime communications.

#### IV. CONCLUSION

32. Based on the record before us, we conclude that, while Granite has not made the requisite showing for a waiver under Section 337(c) of the Act, it has made a sufficient showing for granting its requested waiver in part under Section 1.925 of the Commission's rules. We find that Granite satisfies the criteria set forth under Section 1.925 to warrant a waiver of Sections 80.105 and 80.373(f) to permit Granite to modify its public safety communications system and operate on three Part 80 ship and private coast station frequencies in the 156-162 MHz band. However, Granite has not demonstrated that a waiver of Sections 80.203, 80.205, 80.211, 80.213, and 80.215 of the Commission's rules is warranted.

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<sup>130</sup> See *supra* paras. 23, 26.

<sup>131</sup> See *Coast Station Flexibility Order*, 22 FCC Rcd at 8986-87 ¶ 26.

<sup>132</sup> However, because Granite seeks to use the frequencies for private land mobile use to provide public safety services, certain Part 80 technical limitations, such as those on AMTS operations, would not be applicable. See, e.g., 47 C.F.R. § 80.215(h).

<sup>133</sup> Although under the United States Table of Frequency Allocations, frequency 156.250 MHz is in a band that is allocated for non-federal use under the Commission's jurisdiction, we find that it is in the public interest to condition, as specified below, Granite's operations on protecting maritime communications, including Coast Guard operations, from interference. See 47 C.F.R. § 2.106, Table of Frequency Allocations. Although Coast Guard access to 156.250 MHz is permitted, the allocation of the frequency for non-federal use is within the Commission's jurisdiction. Cf. 47 C.F.R. § 2.105(d)(1), (5)(ii); 47 C.F.R. § 2.106, UNITED STATES (US) FOOTNOTES, US77 (noting that "Federal stations *may* also be authorized" for specified maritime uses) (emphasis added).

<sup>134</sup> In the *State of Montana*, specific conditions were not imposed on the use of the frequency adjacent to the ship and private coast station frequency. See generally *State of Montana*, 19 FCC Rcd at 9818-19 ¶ 6. However, in participating in the I15/90 Consortium and the statewide Montana VHF system, Granite intends to share the requested maritime frequencies on wide area basis for public safety and homeland security communications. We find that such use demands a comprehensive approach to interference protection that requires Granite to closely scrutinize and diligently monitor operations on the frequencies for harmful interference.

Accordingly, we conditionally grant the Waiver Request for Granite's operation on Part 80 maritime spectrum, frequencies 156.050, 156.250, and 156.700 MHz, at Location 1 to ensure interference protection to maritime communications and to Montana DOT's operations on 156.060 MHz.

**V. ORDERING CLAUSES**

33. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), that the Request for Waiver as amended, associated with the File No. 0002780258, filed by the Granite County, Montana, IS DENIED to the extent that Granite County seeks relief under Section 337(c) of the Act.

34. IT IS FURTHER ORDERED that, pursuant to Sections 1, 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 303(r), and to Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, the Request for Waiver as amended, associated with File No. 0002780258, filed by the Granite County, Montana, IS GRANTED IN PART, to the extent described and as conditioned herein.

35. IT IS FURTHER ORDERED that File No. 0002780258 SHALL BE PROCESSED in accordance with this *Order* and the Commission's rules.

36. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers  
Chief, Policy Division  
Public Safety and Homeland Security Bureau